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10 Attorneys for Defendants
NATIONAL INVESTMENT CONSULTANTS, INC.,
11 And WEI M. TSE a.k.a. RAYMOND TSE, and for
12 Relief Defendant THERESA C. WONG,

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DIVISION OF CALIFORNIA**
SAN FRANCISCO DIVISION

15 U.S. COMMODITY FUTURES TRADING
16 COMMISSION and THE COMMISSIONER OF
CORPORATIONS OF THE STATE OF
17 CALIFORNIA,

18 Plaintiffs,

19 vs.

20 NATIONAL INVESTMENT CONSULTANTS,
INC, a California corporation, PACIFIC BEST
21 GROUP LTD, a.k.a. PACIFIC BEST
COMPANY LTD, a British Virgin Islands
22 Corporation, YI KERRY XU, an individual,
RUN PING ZHOU a.k.a. FLORA ZHOU, an
23 individual, and WEI M. TSE a.k.a. RAYMOND
TSE, an individual,

24 Defendants,

25 and

26 THERESA C. WONG, an individual,

27 Relief Defendant.
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CASE NO.: 052641 JSW

**ADMINISTRATIVE MOTION TO
EXTEND TIME FOR FILING AND
SERVICE OF OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND TO
FILE A MOTION TO QUASH**

(No Hearing Set/USDC Civil L.R.
6-3)

Judge: Hon. Jeffrey S. White

1 Pursuant to Local Rule 6-3, Defendants National Investment Consultants, Inc., and Wei
2 M. Tse (Raymond Tse) and Relief Defendant Theresa C. Wong (hereinafter collectively,
3 “Moving Defendants”) hereby apply for an Order extending time for all defendants to file and
4 serve any Opposition to Plaintiffs’ Motion for Preliminary Injunction and/or any motion to
5 quash.

6 The basis for Defendants’ motion is as follows:

7 1. Defendants’ Opposition to Plaintiffs’ Motion and/or any motion to quash is due
8 on July 29, 2005. Defendants, however, only recently retained new counsel on July 28, 2005.
9 Defendants’ new counsel has not had time to adequately investigate all of plaintiffs’ allegations
10 and prepare an opposition to plaintiffs’ Motion for Preliminary Injunction.

11 2. Additionally, lead counsel, Edward Gartenberg, is currently on a long-standing
12 prepaid family vacation and will be out of the office from July 27, 2005 until August 8, 2005.

13 3. The CFTC has seized most, if not all, of the documents located at the offices of
14 Defendant NIC and has not yet returned any of these documents or a copy of these documents to
15 NIC. As such, counsel cannot review these documents prior to the current due date for
16 opposition to the motion for a preliminary injunction.

17 3. Plaintiff Commodity Futures Trade Commission has agreed not to oppose this
18 motion and plaintiffs will not suffer any prejudice since the Moving Defendants are not by this
19 motion requesting a continuance of the hearing date.

20 4. Furthermore, granting the motion will not affect the schedule of this case. The
21 Moving Defendants merely request that the Court modify the briefing schedule and allow all
22 defendants until August 11, 2005 to file and serve their opposition. The Moving Defendants also
23 request that the Court allow plaintiffs until August 19, 2005 to file and serve any Reply in
24 support of their Motion.

25 5. If Moving Defendants’ are not permitted additional time to file and serve their
26 opposition they will be severely prejudiced because they will be unable to timely obtain the
27 information needed to challenge plaintiffs’ allegations.

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1 6. The Moving Defendants also respectfully request that briefing for any motion to
2 quash be extended consistent with the foregoing request to August 11, 2005 for an opening brief,
3 August 18, 2005 for an opposition brief and August 22, 2005 for a reply. The Moving
4 Defendants do not themselves intend to file a motion to quash.

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6 Dated: July 28, 2005

THELEN REID & PRIEST LLP
EDWARD GARTENBERG
ALEXANDRA EPAND
ROBERT A. WEIKERT

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9 By _____/s/_____
10 Robert A. Weikert
11 Attorneys for Defendants
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY

Defendants NATIONAL INVESTMENT CONSULTANTS, INC., and WEI M. TSE a.k.a. RAYMOND TSE, and Relief Defendant THERESA C. WONG¹ (hereinafter collectively “Defendants”)² request a brief extension of time to file and serve their opposition to Plaintiffs’ Motion for Preliminary Injunction (“Plaintiffs’ Motion”) which is currently set for hearing on August 26, 2005.

Defendants’ opposition to Plaintiffs’ Motion is due on July 29, 2005. Defendants, however, only recently retained Thelen Reid & Priest L.L.P. (“Thelen Reid”) as new counsel on July 28, 2005. The attorney who will be lead counsel handling this matter is Edward Gartenberg, Chair of Thelen Reid’s Corporate and Securities Practice Group. Mr. Gartenberg, however, will be out of state on vacation from July 27, 2005 until August 8, 2005.

In addition to the unavailability of counsel, there is good cause to grant this motion since Defendants believe that they have adequate defenses to the allegations set forth in Plaintiffs’ Motion. On or about June 29, 2005, however, the CFTC seized most, if not all, of the documents located at the offices of Defendants NIC and have not returned any of these documents or a copy of these documents to defendants or their counsel. As such, counsel cannot review these documents prior to the current due date for defendants’ opposition, July 29, 2005. Additionally, defense counsel requires additional time to research plaintiffs’ factual and legal allegations in order to properly investigate and respond to the allegations in Plaintiffs’ Motion. Therefore,

¹ Although Ms. Wong is not a defendant subject to the Statutory Restraining Order entered June 29, 2005, this Motion is made on her behalf since counsel for Ms. Wong is informed and believes that one or more bank accounts of Ms. Wong’s have been improperly frozen.

² Thelen Reid is also counsel of record for Pacific Best Group Ltd a.k.a. Pacific Best Company, Ltd., but is still analyzing potential jurisdictional and service issues. Once this analysis is complete, Thelen Reid may bring a Motion pursuant to F.R.C.P. 12(b). and, if so, will make a ‘special appearance’ on behalf of Pacific Best at that time. Without waiving Pacific Best’s ability to make a ‘special appearance’ in this matter, the relief requested by Moving Defendants in the Motion for Extension of Time for briefing is respectfully presented as a request which would extend the time for all defendants.

1 Defendants seek an Order extending the time to file and serve their opposition to Plaintiffs'
 2 Motion so that new counsel has adequate time to investigate plaintiffs' allegations and prepare an
 3 appropriate opposition.

4 Plaintiffs will not suffer any prejudice if this motion is granted. Defendants are not by this
 5 motion requesting a continuance of the hearing date. Furthermore, CFTC counsel has courteously
 6 agreed that it will not oppose a defense motion which extends the briefing dates as requested in
 7 this Motion. In contrast, Defendants will be prejudiced if this Motion is not granted. This case
 8 involves complex factual and legal issues, including trading of foreign currency, jurisdictional and
 9 service issues. In view of the complexity of the case, the fact that this firm was retained very
 10 recently, and the fact that principal trial counsel will be out of the office until well after the date
 11 the opposition to the motion is currently due, Defendants will be prejudiced if required to respond
 12 to plaintiffs' motion by July 29, 2005.

13 Local Rule 6-3 of the United States District Court, Northern District of California permits
 14 a party to move to extend the time for filing an opposition to a motion. Good cause exists for
 15 this motion as evidenced by the attached Declaration of Alexandra Epan. Pursuant to United
 16 States District Court of Northern California Local Rule 6-3(a)(2), Defendants attempted to
 17 obtain a stipulation from plaintiffs' counsel to extend the time for Defendants to file opposition
 18 to Plaintiffs' Motion. (*See* Declaration of Alexandra Epan, "Epan Decl.," ¶ 7.) Although
 19 counsel for the CFTC would not agree to the stipulation, they agreed not to oppose Defendants'
 20 motion and also agreed to the following briefing schedule: Defendants' opposition filed and
 21 served on August 11, 2005 and Plaintiffs' reply filed and served on August 19, 2005. *Id.*
 22 Granting this motion will not affect the schedule of this case since Defendants are not requesting
 23 a continuance of the hearing date of Plaintiffs' Motion. (Epan Decl. ¶ 12.)

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1 For the reasons stated herein, Defendants respectfully request that the Court grant
2 Defendants' Motion To Extend time to file Opposition to Plaintiffs' Motion for Preliminary
3 Injunction.

4 Dated: July 28, 2005

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EDWARD GARTENBERG
ALEXANDRA EPAND
ROBERT A. WEIKERT

7
8 By _____/s/_____
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